

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

MICHAEL CASEY,

Plaintiff(s),

-against-

MONTEFIORE WESTCHESTER SQUARE formerly known as WESTCHESTER SQUARE MEDICAL CENTER,

Defendant(s).

SUMMONS

Plaintiff(s) designate BRONX County as the place of trial.

The basis of the venue is Defendant's Place of Business

Plaintiff(s) reside at
5 Winthrop Drive
Cortlandt Manor, NY 10567

Index No.:
Date Summons &
Complaint Filed:

X

To the above named Defendant(s)

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer, or if the complaint is not served with this summons, to serve a notice of appearance on the plaintiff's attorney(s) within twenty days after the services of this summons exclusive of the day of service, where service is made by delivery upon you personally within the state, or within 30 days after completion of service where service is made in any other manner. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: Port Washington, NY
September 26, 2019

Brett A. Zekowski
Parker Waichman LLP
Office & Post Office Address:
6 Harbor Park Drive
Port Washington, NY 11050
(516) 466-6500
Our File # 9005869

TO: Montefiore Westchester Square
Formally known as Westchester
Square Medical Center
2475 St. Raymond's Avenue
Bronx, NY 10461

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

MICHAEL CASEY,

X

VERIFIED COMPLAINT

Plaintiff(s),

Index No.:
Jury Trial Demanded

-against-

MONTEFIORE WESTCHESTER SQUARE, formerly
known as WESTCHESTER SQUARE MEDICAL
CENTER,

Defendant(s).

X

Plaintiff, Michael Casey, by his attorneys, Parker Waichman LLP, complaining of the defendants, respectfully alleges, on personal knowledge as to himself and on information and belief as to all other matters, as follows:

1. At the time of the commencement of this action plaintiff, Michael Casey, was a resident of the County of Westchester, State of New York.
2. At the time of the incident(s) giving rise to this complaint, plaintiff was a resident of the County of Bronx, State of New York.
3. This action is timely pursuant to CPLR 214-g.
4. At all times herein mentioned, defendant, Montefiore Westchester Square, formerly known as Westchester Square Medical Center (hereinafter referred to as "Westchester Square Medical Center"), was a not for profit corporation incorporated in the State of New York by virtue of the laws of the State of New York.
5. At all times herein mentioned, defendant, Westchester Square Medical Center, was located at 2475 St. Raymond's Avenue, Bronx, New York 10461.
6. At all times herein mentioned, Dr. Marcus Ponce was a doctor operating under the direction and control of defendant, Westchester Square Medical Center, and its agents, servants

and/or employees.

7. At all times herein mentioned, Dr. Marcus Ponce, was an agent, servant and/or employee of defendant, Westchester Square Medical Center.

8. The negligence and recklessness of defendant, Westchester Square Medical Center, caused Dr. Marcus Ponce, to have access to infants, on hospital premises and elsewhere, despite its knowledge that Dr. Marcus Ponce, sexually abused children and/or had the propensity to sexually abuse children. defendant, Westchester Square Medical Center, is therefore liable for the injuries that plaintiff suffered because, but for defendant, Westchester Square Medical Center's negligence, plaintiff would not have suffered the mental and physical anguish inflicted by Dr. Marcus Ponce.

9. Dr. Marcus Ponce, sexually assaulted plaintiff, Michael Casey and many other young patients of defendant, Westchester Square Medical Center, in the Bronx, New York. Nonetheless, defendant, Westchester Square Medical Center, failed to remove Dr. Marcus Ponce, from his position as a doctor or to take any steps to keep this sexual predator away from children. In fact, defendant, Westchester Square Medical Center, continued to allow, encourage and/or permit Dr. Marcus Ponce, to have unfettered access to infants.

10. On or about January 1, 1973 through December 31, 1978, Dr. Marcus Ponce, sexually assaulted and unlawfully touched plaintiff in the examining room of his office, at defendant, Westchester Square Medical Center, as well as the hospital dorm rooms and off premises. Dr. Marcus Ponce's abuse consisted of anal sex and oral sex beginning when the plaintiff was approximately only twelve (12) year old and continued until the age of approximately seventeen (17). Dr. Marcus Ponce, also exposed the plaintiff to pornographic movies.

11. Dr. Marcus Ponce, was able to gain access to plaintiff by using his position of authority as a doctor affiliated with defendant, Westchester Square Medical Center, provided by

defendant, Westchester Square Medical Center, to gain the trust of plaintiff, other children and their families.

12. As a result of the actions of defendant, Westchester Square Medical Center, and Dr Marcus Ponce, plaintiff felt and continues to feel ashamed and uncomfortable. Plaintiff has endured and continues to suffer severe emotional distress due to the negligence of defendant, Marcus Ponce.

13. As a result of the foregoing, plaintiff suffered catastrophic and lifelong injuries as a result of defendant, Westchester Square Medical Center's negligence in undertaking a duty, including but not limited to *in loco parentis*, in failing to protect its infant patients and to keep them safe from Dr. Marcus Ponce, despite defendant, Westchester Square Medical Center, having knowledge that Dr. Marcus Ponce, sexually abused children and/or had the propensity to sexually abuse children, and/or allowing Dr. Marcus Ponce, to continue to have a position of authority and power and in failing to adequately supervise Dr. Marcus Ponce.

**AS AND FOR A FIRST CAUSE OF ACTION
NEGLIGENCE HIRING, RETENTION, SUPERVISION AND/OR DIRECTION**

14. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 13 as if fully set forth herein.

15. The sexual abuse of children by adults, including medical doctors and other medical providers, is foreseeable.

16. Defendant, Westchester Square Medical Center, at all relevant times, had a duty to supervise and prevent known risks of harm to its infant patients by its doctors and staff.

17. Defendant, Westchester Square Medical Center, was negligent in hiring, retaining, directing and supervising its personnel, such as Dr. Marcus Ponce, who were careless, unskillful, negligent, reckless and acted in a willful and wanton manner in not possessing the requisite

knowledge and skill of doctors and hospital staff who should have properly been supervising the doctors and hospital staff to ensure the safety of its infant patients.

18. Defendant, Westchester Square Medical Center, knew or should have known that Dr. Marcus Ponce sexually abused and/or had the propensity to sexually abuse children and did nothing to stop it.

19. As a direct and proximate result of defendant, Westchester Square Medical Center's negligent hiring, supervising and retention of Dr. Marcus Ponce, plaintiff was caused to suffer serious personal injuries, emotional distress, conscious pain and suffering, mental anguish and/or physical manifestations thereof, and other losses, all of which have not as yet been ascertained.

20. By reason of the foregoing, defendant, Westchester Square Medical Center, is liable to plaintiff for compensatory damages and punitive damages, together with costs and interest in an amount which exceeds the jurisdiction of all lower courts which would otherwise have jurisdiction.

**AS AND FOR A SECOND CAUSE OF ACTION
NEGLIGENCE/GROSS NEGLIGENCE**

21. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 20 as if fully set forth herein.

22. Defendant, Westchester Square Medical Center, knew or negligently failed to know that Dr. Marcus Ponce posed a threat of sexual abuse to children.

23. At all relevant times, defendant, Westchester Square Medical Center, owed a duty of care to plaintiff and other infant patients, including but not limited to *in loco parentis*, to keep them safe from sexual abuse by the doctors and staff under its supervision and control.

24. At all relevant times, defendant, Westchester Square Medical Center, and/or its agents, servants and/or employees breached the above stated duty in a negligent, reckless, willful and wanton manner, and caused plaintiff to be sexually assaulted by Dr. Marcus Ponce while on

defendant, Westchester Square Medical Center's premises.

25. As the result of defendant, Westchester Square Medical Center's failure to carry out its duty to plaintiff, as described above, plaintiff was caused to experience severe psychological injuries and the loss of enjoyment of life. These injuries are persistent, permanent and debilitating in nature.

26. By reason of the foregoing, plaintiff is entitled to compensatory and punitive damages in an amount which exceeds the jurisdiction of all lower courts which would otherwise have jurisdiction.

**THIRD CAUSE OF ACTION
NEGLIGENT INFILCTION OF EMOTIONAL DISTRESS**

27. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 26 above as if set forth at length herein.

28. As described above, defendant, Westchester Square Medical Center, and Dr. Marcus Ponce acted in a negligent and/or grossly negligent manner.

29. Defendant, Westchester Square Medical Center, and its agents, servants and/or employees knew or reasonably should have known that the sexual abuse and other improper conduct would and did proximately result in physical and emotional distress to plaintiff.

30. Defendant, Westchester Square Medical Center, had the power, ability, authority and duty to intervene with and/or stop the improper conduct that resulted in plaintiff being sexually abused by Dr. Marcus Ponce.

31. Despite said knowledge, power and duty, defendant negligently failed to act to stop, prevent and prohibit the improper conduct that resulted in Dr. Marcus Ponce sexually abusing plaintiff.

32. The actions of defendant, Westchester Square Medical Center, and Dr. Marcus

Ponce endangered plaintiff's safety and caused him to fear for his own safety.

33. As a direct and proximate result of the actions of defendant, Westchester Square Medical Center, and Dr. Marcus Ponce, which included, but were not limited to, negligent and/or grossly negligent conduct, plaintiff suffered severe injuries and damages as described herein, including, but not limited to, mental and emotional distress.

34. By reason of the foregoing, defendant, Westchester Square Medical Center, is liable to plaintiff for compensatory damages and for punitive damages, together with costs and interest.

WHEREFORE, plaintiff demands judgment against defendants on each cause of action as follows:

- A. Awarding compensatory damages in an amount to be proven at trial, but in any event in an amount that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction;
- B. Awarding punitive damages to the extent permitted by law;
- C. Awarding prejudgment interest to the extent permitted by law;
- D. Awarding costs and fees of this action, including attorneys' fees, to the extent permitted by law;
- E. Awarding such other and further relief as to this Court may seem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Dated: Port Washington, New York
September 26, 2019

Yours, etc.



Brett A. Zekowski
Parker Waichman LLP
Attorneys for Plaintiff(s)
Office & Post Office Address
6 Harbor Park Drive
Port Washington, NY 11050
516-466-6500
Our File # 9005869

ATTORNEY'S VERIFICATION

STATE OF NEW YORK)
 : ss :
COUNTY OF NASSAU)

Brett A. Zekowski, an attorney and counselor at law, duly admitted to practice in the Courts of the State of New York, affirms the following to be true under penalties of perjury:

I am an associate of the firm **Parker Waichman LLP** attorneys for the plaintiff(s) herein.

I have read the foregoing Complaint and know the contents thereof. Upon information and belief, I believe the matters alleged therein to be true.

The source of your deponent's information and the grounds of my belief are communications, papers, reports and investigations contained in my file.

The reason this verification is made by deponent and not by plaintiff(s) is that plaintiff(s) reside in a county other than the one in which your deponent's office is maintained.

Dated: Port Washington, NY
September 26, 2019



Brett A. Zekowski

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

MICHAEL CASEY,

Plaintiff(s),

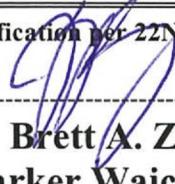
-against-

MONTIPIORE WESTCHESTER SQUARE formerly known as WESTCHESTER SQUARE MEDICAL CENTER,

Defendant(s).

SUMMONS AND VERIFIED COMPLAINT

Certification per 22NYCRR §130-1.1a


Brett A. Zekowski
Parker Waichman LLP
Attorneys for Plaintiff(s)
6 Harbor Park Drive
Port Washington, NY 11050
(516) 466-6500

To:

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated:

.....

Attorney(s) for

PLEASE TAKE NOTICE

NOTICE OF

ENTRY that the within is a (certified) true copy of a entered in the office of the Clerk of the within named Court on 2019 .

NOTICE that an Order of which the within is a true copy will be presented to the Hon. , one of the
OF
SETTLEMENT judges of the within named Court, at ,
, on
20 , at M.

Dated:

Parker Waichman LLP
Attorneys for Plaintiff(s)

TO: